

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

No. C 94-2307 CW

ORDER GRANTING
PLAINTIFFS'
RENEWED MOTION TO
REQUIRE DEFENDANTS
TO TRACK AND
ACCOMMODATE NEEDS
OF ARMSTRONG CLASS
MEMBERS HOUSED IN
COUNTY JAILS,
ENSURE ACCESS TO A
GRIEVANCE
PROCEDURE, AND TO
ENFORCE 2001
PERMANENT
INJUNCTION
(Docket No. 1912)

Plaintiffs move for an order requiring Defendants to track and accommodate the needs of Armstrong class members housed in county jails and to provide access to a workable grievance procedure. Defendants oppose the motion. The matter was heard on October 27, 2011. Having considered oral arguments and all of the materials submitted by both parties, the Court GRANTS Plaintiffs' motion.

BACKGROUND

This lawsuit was originally filed seventeen years ago by disabled prisoners and parolees against the California officials with responsibility over the corrections and parole systems. This Court certified Plaintiffs as representatives for a class including "all present and future California state prisoners and

1 parolees with mobility, sight, hearing, learning, developmental
2 and kidney disabilities that substantially limit one or more of
3 their major life activities." Order Granting Pls.' Mots. to Am.
4 Compl. and Modify the Class, Docket No. 345, January 5, 1999, at
5 2.¹ On behalf of the class, Plaintiffs sought accommodations for
6 their disabilities, as required under federal statutes and the
7 United States Constitution.
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9 Initially, Plaintiffs sued two divisions of the then
10 California Youth and Adult Corrections Authority (the Agency).
11 The two divisions sued had separate areas of responsibility toward
12 prisoners and parolees: the Board of Prison Terms (BPT) had
13 authority over parole and parole revocation hearings, and the
14 California Department of Corrections (CDC) was responsible for all
15 other aspects of prisoners' and parolees' lives, including
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21 ¹ The Plaintiff class was certified on January 13, 1995. On
22 December 24, 1998, the parties stipulated to amend the class
23 definition to include "all present and future California state
24 prisoners and parolees with mobility, sight, hearing, learning and
25 kidney disabilities that substantially limit one or more of their
26 major life activities." Stipulation and Order Amending Pl. Class,
27 Docket No. 342, December 24, 1998, at 2. The class definition was
28 subsequently modified, as to Defendants Board of Prison Terms
(BPT) and Chairman of the BPT only, to add prisoners and parolees
with developmental disabilities on January 5, 1999. Order
Granting Pls.' Mots. to Am. Compl. and Modify the Class, January
5, 1999, at 2.

1 supervision of parolees.² By agreement of the parties, litigation
2 against the two divisions was initially bifurcated and proceeded
3 on two separate tracks.

4 On September 20, 1996, this Court ordered CDC and related
5 Defendants to develop plans to ensure that their facilities and
6 programs were compliant with the Americans With Disabilities Act
7 (ADA), 42 U.S.C. §§ 12131 et seq., and readily accessible to and
8 usable by prisoners and parolees with disabilities. The order
9 also required Defendants to develop policies to provide a prompt
10 and equitable disability grievance procedure, to allow approved
11 assistive aids for prisoners with disabilities in segregation
12 units and reception centers, and to ensure accessibility in new
13 construction and alterations. Remedial Order, Injunction and
14 Certification for Interlocutory Appeal, September 20, 1996. The
15 Court retained jurisdiction to enforce its terms. Id. at 5.³

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18 Following a bench trial in April and May 1999, the Court
19 found on December 22, 1999 that BPT and other Defendants
20 responsible for conducting parole proceedings were in violation of
21 the ADA, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.

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23 ² Since this lawsuit was originally commenced, the Agency has
24 been reorganized and superseded by the California Department of
25 Corrections and Rehabilitation (CDCR). BPT is now the Board of
26 Parole Hearings (BPH). CDC has been replaced by the Division of
27 Adult Institutions (DAI) and the Division of Adult Parole
28 Operations (DAPO).

³ The Ninth Circuit affirmed the injunction against the CDC
Defendants on appeal. See Armstrong v. Wilson, 124 F.3d 1019 (9th
Cir. 1997), cert. denied, 524 U.S. 937 (1998).

1 § 794, and the Due Process Clause of the Fourteenth Amendment.
2 Findings of Fact and Conclusions of Law, December 22, 1999, Docket
3 No. 523.

4 The Court's Findings of Fact and Conclusions of Law held
5 that:

6 Defendants cannot avoid ADA and Section 504 liability by
7 delegating responsibility for their delivery of
8 programs, services and activities, or for the facilities
9 in which they provide these programs, to the CDC or any
10 other entity. The implementing regulations of both the
11 ADA and Section 504 prohibit covered entities from
12 discriminating against individuals with disabilities
13 "directly or through contractual, licensing, or other
14 arrangements." The BPT is thus legally obliged to
15 ensure non-discrimination wherever programs, services or
16 activities are provided to Plaintiff class members.
17 Additionally, the BPT cannot avoid liability for
18 violations of the physical accessibility standards by
19 holding its programs in locations under the control of
20 other entities.

21 Findings of Fact and Conclusions of Law, at 90 (internal citations
22 omitted). At that time, the Court also found that certain large
23 jail facilities utilized by these Defendants for parole
24 proceedings, including the Los Angeles County Men's Jail, were
25 inaccessible for people with disabilities, which raised an
26 inference that this was a system-wide problem. Id. at 31-32. The
27 Court determined that these Defendants violated the rights of
28 class members in county facilities for parole revocation
proceedings in many of the same ways alleged in the instant
motion, including depriving them of assistive devices for mobility
problems or accommodations for hearing and vision impairments.
Id. at 32-38, 41-43, 45-47, 49-52, 60-66. The Court also

1 recognized that these Defendants did not have an adequate system
 2 for tracking the facts of parolees' disabilities in their files,
 3 or for allowing parolees to communicate their accommodation needs.
 4 Id. at 38-40. Based on its Findings of Fact and Conclusions of
 5 Law, the Court entered a permanent injunction as to these
 6 Defendants. Permanent Injunction, Docket No. 524.⁴

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 8 On January 3, 2001, the CDC Defendants amended their Court
 9 Ordered Remedial Plan regarding the provision of programs and

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 11 ⁴ On appeal, the Ninth Circuit affirmed the injunction
 12 against the BPT Defendants with minor changes. See Armstrong v.
 13 Davis, 275 F.3d 849, 879 (9th Cir. 2001), cert. denied, 537 U.S.
 14 812 (2002). Several cases have since indicated that the Ninth
 15 Circuit's decision in Armstrong was abrogated in part by Johnson
 16 v. California, 543 U.S. 499, 504-05 (2005). See, e.g., Harris v.
Alvarado, 402 Fed. Appx. 180, 181 (9th Cir. 2010); Kirola v. City
of San Francisco, 2011 WL 1330853, at *4 (N.D. Cal.); Melendres v.
Arpaio, 2011 WL 6740711, at *19 (D. Ariz.). However, this is not
 accurate.

17 In Johnson v. California, the Supreme Court held that the
 18 CDC's policy of racially segregating inmates, like all racial
 19 classifications imposed by the government, should be considered
 20 under strict scrutiny, rather than under the deferential standard
 21 articulated in Turner v. Safley, 482 U.S. 78 (1987), under which a
 court considers whether regulations that burden the prisoners'
 fundamental rights are reasonably related to legitimate
 penological interests. 543 U.S. at 504-15.

22 Armstrong, however, did not concern or discuss racial
 23 classification; instead, it concerned appropriate accommodations
 24 for prisoners and parolees with disabilities. In Armstrong, the
 25 Ninth Circuit considered whether the state had provided a
 legitimate penological justification for its failure to comply
 with the ADA under the standard articulated in Turner v. Safley,
 assuming, without deciding, for the purposes of its discussion
 26 that this standard applied to both prisoners and parolees. 275
 F.3d at 873-74. It did not review "race-based prison regulations"
 27 as some courts apparently believe that it did. Harris v.
Alvarado, 402 Fed. Appx. at 181.

1 services to inmates and parolees with disabilities. The Remedial
2 Plan requires Defendants to ensure that prisoners and parolees
3 with disabilities are accessibly housed, that they are able to
4 obtain and keep necessary assistive devices, and that they receive
5 effective communication regarding accommodations. Id. at 1-7,
6 27-28, 32, 34, 46-47. The Remedial Plan also requires Defendants
7 to include in all contracts language that requires subcontractors
8 to comply with the ADA. Id. at 46.

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10 The Court entered a Revised Permanent Injunction against the
11 BPT Defendants on February 11, 2002. The Revised Permanent
12 Injunction requires these Defendants to provide accommodations, at
13 all parole proceedings, to prisoners and parolees with
14 disabilities. Revised Permanent Injunction, February 11, 2002,
15 ¶ 17. The subsequent Order Granting Motion to Enforce Revised
16 Permanent Injunction issued on May 30, 2006, requires that
17 Defendants develop and implement a plan to ensure that necessary
18 accommodations are provided to class members without delay. Order
19 Granting Motion to Enforce Revised Permanent Injunction, May 30,
20 2006, at 8-9. In that Order, the Court found that Defendants did
21 not have an adequate system to track parolees with disabilities.
22 Id. at 4. The Court also found that, as a result, parolees with
23 disabilities were not being provided with required accommodations,
24 including mobility assistance for paraplegics and sign language
25 interpreters for deaf parolees. Id. at 5-6. At that time,
26 Defendants did not contest the extensive evidence that Plaintiffs
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1 submitted to demonstrate ongoing violations of the same type
2 alleged in the instant motion, such as evidence that a paraplegic
3 parolee had to drag himself up stairs. Id.

4 On September 11, 2007, in response to Plaintiffs' motion to
5 enforce the May, 2006 Order Granting Motion to Enforce Revised
6 Permanent Injunction, this Court Ordered:

7 Within thirty days of this order, Defendants shall
8 report to Plaintiffs' counsel which housing units in
9 Alameda, Sacramento and Los Angeles County Jail
10 facilities are wheelchair accessible and how Defendants
11 ensure that class members at those institutions who are
12 designated DPW and DPO are housed in the accessible
13 facilities and receive necessary accommodations and
14 assistive devices in both their housing units and at
15 their hearings. Within ninety days of this order,
16 Defendants shall do the same with the remaining county
17 jails. A necessary component of both reports is how
18 Defendants track class members who are housed in county
19 facilities due to parole holds.

20 Order Granting in Part Plaintiffs' Motion to Enforce the May 30,
21 2006 Order, ¶ 19. At that time, the Court found that Defendants'
22 tracking system for information about disabilities of prisoners
23 and parolees was still inadequate. Id. at 4-6. The Court also
24 found that Defendants had failed to develop an adequate plan to
25 provide needed accommodations for parole proceedings in county
26 jails and rejected Defendants' assertion that "county jails
27 provide adequate access to necessary assistive devices for class
28 members" as without proof. Id. at 9-10.

On May 28, 2009, Plaintiffs filed a Motion to Require
Defendants to Track and Accommodate Needs of Armstrong Class

1 Members Housed in County Jails and Ensure Access to a Workable
2 Grievance Procedure.

3 On September 16, 2009, this Court held that Defendants are
4 responsible for ensuring that Armstrong class members receive
5 reasonable accommodations when Defendants elect to house them in
6 county jails. Order Granting Plaintiffs' Motion to Require
7 Defendants to Track and Accommodate Needs of Armstrong Class
8 Members Housed in County Jails and Ensure Access to a Workable
9 Grievance Procedure, September 16, 2009, at 7-9. The Court stated
10 that Plaintiffs had submitted evidence demonstrating that,
11 pursuant to their authority, Defendants were housing a significant
12 number of persons in county jails, including an average of 480
13 parolees a day in the San Mateo County Jail, an average of 1,000
14 parolees a day in the Sacramento County Jail, and 770 individuals
15 in In-Custody Drug Treatment Program (ICDTP) placements in county
16 jails. Id. at 4-5. The Court also held that Plaintiffs had
17 submitted sufficient evidence that class members being housed in
18 county jails were not receiving accommodations to which they were
19 entitled. Id. at 9-10. Accordingly, the Court entered an order
20 requiring that Defendants, within thirty days, submit a plan "for
21 ensuring timely and appropriate accommodations for Armstrong class
22 members in county jails[.]" Id. at 11. The September 16 Order
23 provided Defendants with flexibility to devise the specifics of
24 the plan, but also required that the plan contain certain
25 elements. Id. at 11-14. The Court also found, pursuant to
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1 requirements of the Prison Litigation Reform Act, 18 U.S.C.
2 § 3626(a)(1)(A), that the relief it ordered was "narrowly drawn,
3 extend[ed] no further than necessary to correct the violation of
4 federal rights, and [was] the least intrusive means necessary to
5 correct the violation of the federal rights[.]" Id. at 11.

6 Defendants appealed this Court's September 16 Order.
7 Nonetheless, on October 15, 2009, as required by the September 16
8 Order, Defendants provided "written notification and instruction
9 to all county jail facilities of their duty to comply with the ADA
10 in housing Armstrong class members and that defendants will
11 enforce those obligations." September 16 Order, at 11.

12 On April 1, 2010, after negotiations between the parties,
13 Defendants issued their County Jail Plan, entitled the "County
14 Jail Accommodation Process," in a further effort to comply with
15 the September 16 Order.
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17 On September 7, 2010, the Ninth Circuit affirmed in part and
18 vacated in part the September 16 Order, and remanded the case to
19 this Court for further proceedings. The Ninth Circuit affirmed
20 this Court's holdings that "defendants are responsible for
21 providing reasonable accommodations to the disabled prisoners and
22 parolees that they house in county jails." Armstrong v.
23 Schwarzenegger, 622 F.3d 1058, 1063 (9th Cir. 2010). The Ninth
24 Circuit held that: (1) the validly enacted ADA Title II
25 regulations provide that "a public entity, in providing any aid,
26 benefit, or service, may not, directly or through contractual,
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1 licensing, or other arrangements, discriminate against individuals
2 with disabilities[,]” id. at 1065 (quoting 28 C.F.R.
3 § 35.130(b)(1)); (2) the ADA requires that when Defendants house
4 state prisoners and parolees in county jails, the state is
5 responsible to ensure that the state prisoners and parolees with
6 disabilities can access the county jails’ benefits and services
7 “to the same extent that they are provided to all other detainees
8 and prisoners,” id. at 1068; (3) neither principles of federalism
9 nor deference to correctional authorities nor the Prison
10 Litigation Reform Act prohibited this Court’s order requiring that
11 when Defendants “become aware of a class member housed in a county
12 jail who is not being accommodated, they either see to it that
13 that jail accommodates the class member, or they move the class
14 member to a facility . . . which can accommodate his needs[,]” id.
15 at 1069, or that when Defendants “become aware of a ‘pattern’ of
16 ADA noncompliance, they are to notify county jail officials and
17 take steps to remedy the pattern of noncompliance[.]” Id. at
18 1069-1070.

21 Although the Ninth Circuit affirmed this Court’s rulings on
22 the requirements of the ADA, it ruled that the system-wide scope
23 of relief ordered required development of additional evidence
24 concerning the nature and extent of the violations. Id. at 1063,
25 1073-1074. It found that the type of relief ordered would be
26 appropriate if such additional evidence were presented. Id. at
27 1070-1074. In finding that the evidence was insufficient to
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1 justify the scope of September 16 Order, the Ninth Circuit stated
2 that this Court failed to identify any "past determinations that
3 show that class members housed in county jails are not being
4 accommodated . . . and thus, we are required to conclude, did not
5 rely on them when determining the scope of its order." Id. at
6 1073. The Ninth Circuit reversed the September 16 Order and
7 remanded to this Court "to allow it to take such additional
8 evidence as may be necessary concerning the nature and extent of
9 the violations of class members' rights taking place in the county
10 jails." Id. at 1073. The Ninth Circuit described Plaintiffs'
11 evidentiary burden on remand as "far from insurmountable" and
12 explained that "in light of the State's failure to track many of
13 the class members that it houses in the County Jails, not much
14 more evidence than that already provided may be required to
15 approve the [September 16 Order]." Id. at 1074.

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18 On October 1, 2011, state legislation commonly known as the
19 prison "realignment" law went into effect. Under realignment,
20 parolees who were already placed on state parole prior to October
21 1, 2011 remain under the supervision of Defendants. Cal. Penal
22 Code § 3000.09(b). Further, persons released from state prison on
23 or after October 1, 2011, who fall into certain categories,
24 including conviction of serious or violent felonies, continue to
25 be placed on state parole under the jurisdiction and supervision
26 of Defendants. Cal. Penal Code § 3000.08(a), (c). Under
27 realignment, low-level offenders who are released from state
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1 prison on or after October 1, 2011 and do not fall into the above-
2 mentioned categories are instead supervised on release by counties
3 under the newly created Post-Release Community Supervision
4 program. Cal. Penal Code § 3000.08(a), 3451.⁵ Realignment also
5 amended Penal Code section 3056, which now provides, in relevant
6 part:

7 Prisoners on parole shall remain under the supervision
8 of the department. . . . [U]pon revocation of parole, a
9 parolee may be housed in a county jail for a maximum of
10 180 days. When housed in county facilities, parolees
11 shall be under the legal custody and jurisdiction of
12 local county facilities. When released from custody,
13 parolees shall be returned to the parole supervision of
14 the department for the duration of parole.

15 Cal. Penal Code § 3056(a).

16 Plaintiffs have submitted evidence that there are
17 currently over 100,000 parolees under Defendants'
18 supervision. Grunfeld Reply Decl. ¶ 25, Ex. O. In February
19 2011, Defendants classified approximately seven percent of
20 the incarcerated population as individuals with disabilities,
21 excluding learning disabilities and mental health concerns.
22 Grunfeld Decl. ¶ 53. According to Defendants' own estimates,
23 approximately half of the individuals released from prison in
24 the state after October 1, 2011 will be placed on state
25 parole under the jurisdiction and supervision of Defendants.

26 ⁵ Plaintiffs state that their present motion is not meant to
27 encompass individuals in the PRCS program, and is limited to state
28 prisoners and state parolees. Accordingly, the Court limits its
analysis and does not consider Defendants' responsibility to
individuals in the PRCS program, who are housed in county jails.

1 Grunfeld Decl. ¶ 43, Exs. FFF, HHH. Defendants also project
2 that thousands of parolees will be housed in county jails on
3 a daily basis. Id.

4 DISCUSSION

5 Defendants now no longer dispute that "California state
6 prisoners and parolees with mobility, sight, hearing, learning and
7 developmental disabilities" are not being provided proper
8 accommodations while housed at county jails or that they are
9 suffering harm as a result. Defendants also do not dispute that
10 these parolees do not have access to a proper grievance system.
11 Instead, Defendants primarily argue that, under the realignment
12 statute, state parolees are no longer members of the Armstrong
13 class when they are housed in county jails and thus that the
14 proposed injunction is broader than necessary to accommodate the
15 needs of class members. Defendants also contend that the proposed
16 injunction would violate the federalism principles set forth in
17 Printz v. United States, 521 U.S. 898 (1997), and that the relief
18 requested here concerns the same issues being litigated in other
19 pending federal class action cases, so this Court should abstain
20 from exercising jurisdiction here.

23 I. Responsibility for Providing Accommodations in County Jails

24 The Ninth Circuit has held that, under the ADA and the
25 Rehabilitation Act, Defendants have the legal responsibility to
26 ensure ADA-compliant conditions for Armstrong class members whom
27 they house in county jails. Armstrong, 622 F.3d at 1068, 1074.
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1 Defendants rely heavily on sections of the California Penal
2 Code that have not yet gone into effect. As these codes sections
3 are currently written, after July 1, 2013, control over parole
4 revocation proceedings and decisions will transfer from Defendants
5 to local courts, although Defendants will continue to supervise
6 parolees. However, this Court must apply the law currently in
7 effect and will not speculate as to what effect, if any, potential
8 changes to the applicable laws may have on its rulings in the
9 future.
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11 Defendants do not dispute that they continue to have
12 responsibility for certain groups of state prisoners and parolees
13 housed in county jails: those already there "as of October 1, 2011
14 pending parole revocation proceedings, offenders sentenced to life
15 terms who may return to state prison, and state inmates housed in
16 county jail for county proceedings." Opp. at 6. Defendants also
17 not dispute that they continue to house substantial numbers of
18 CDCR prisoners and parolees pursuant to various contracts and
19 other arrangements. These include contracts with Alameda and
20 Sacramento Counties that Defendants renewed only months before the
21 realignment statute went into effect and that provide for payments
22 to those counties of up to \$160 million over the next five years
23 to house as many as 1,150 state inmates per day. See Grunfeld
24 Decl. ¶ 38, Ex. DDD; Grunfeld Reply Decl. ¶ 33, Ex. Q. Defendants
25 also contract with a number of counties to house state prisoners
26 in jail-based ICDTPs. Grunfeld Decl. ¶ 33, Exs. MM, OO. See also
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1 Cal. Penal Code § 4115 (local counties "may enter into a contract
2 with the Department of Corrections and Rehabilitation to house
3 inmates who are within 60 days or less of release from the state
4 prison to a county jail facility for the purpose of reentry and
5 community transition purposes"). Defendants do not dispute that
6 they are still empowered, under various code sections, to hold
7 local county jails accountable for not adhering to minimum
8 standards prescribed by Defendants. See, e.g., Cal. Penal Code
9 § 4016.5 (allowing Defendants to withhold reimbursements to
10 counties for housing certain state prisoners if the county's
11 "facilities do not conform to minimum standards for local
12 detention facilities" and the county fails to make reasonable
13 efforts to correct the violations); Cal. Gov. Code § 76101
14 (providing that any jail or addition "constructed with moneys from
15 the Criminal Justice Facilities Construction Fund shall comply
16 with the 'Minimum Standards for Local Detention Facilities'
17 promulgated by the Board of Corrections").

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20 Defendants disclaim responsibility for state parolees who are
21 taken into custody for alleged parole violations or whose parole
22 is revoked and who are housed in county jails. They argue that
23 state law now provides that these state parolees are to be housed
24 in county jails and that, during the time of such incarceration,
25 the county has custody and jurisdiction over these state parolees.
26 Defendants aver that this relieves Defendants of responsibility
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1 toward those who may be Armstrong class members. See Cal. Penal
2 Code § 3056(a).

3 However, as prior to the enactment of the realignment
4 statute, state parolees housed by Defendants in county jails are
5 in the custody and control of the county, while simultaneously in
6 the continuing custody and control of Defendants. See, e.g.,
7 Samson v. California, 547 U.S. 843, 851 (2006) ("an inmate-turned-
8 parolee remains in the legal custody of the California Department
9 of Corrections through the remainder of his term . . . and must
10 comply with all of the terms and conditions of parole"). As
11 before the realignment statute went into effect, Defendants
12 continue to maintain control and authority over whether the state
13 parolees under their supervision are to be taken into custody and
14 placed into a county jail. Parolees are placed into county jails
15 by virtue of their status as state parolees and do not cease being
16 state parolees while they are also county jail inmates.

17 Defendants BPH and Brown continue to be the only ones able to
18 place a parole hold on a parolee and to have the parolee taken
19 into custody for an alleged violation of parole terms without
20 being eligible for bail. Cal. Penal Code §§ 3056, 3062; In re
21 Law, 10 Cal. 3d 21, 24-26 (1973). Under Defendants' implementing
22 policies, county jails are not permitted to turn away parolees who
23 have been medically cleared and whom Defendants bring to the
24 county jails, but if they do so, Defendants must "maintain
25 custody" of the parolee. Grunfeld Reply Decl., Ex. K at 3. Under
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1 current law, Defendants BPH and Brown alone have the authority to
2 adjudicate whether a parolee has in fact violated his parole or to
3 decide his sanction, including detention in a county jail. Cal.
4 Penal Code §§ 3000(b)(8), 3000.09(d), 3060, 3062. State law does
5 not mandate this sanction, and it does not designate the
6 particular county facility where the parolee is to be held; these
7 are decisions left to Defendants, who can choose to transfer
8 parolees away from facilities that unable to meet their needs.
9 Defendants also continue to compensate counties for housing state
10 parolees in county jails during the revocation process and during
11 the term of the revocation, now through the use of newly
12 established Local Community Corrections Accounts, which
13 compensates a county based on the number of prisoners that the
14 county is expected to supervise and house, an amount that thus
15 could be reduced if Defendants chose to house parolees in other
16 county jails instead. Cal. Penal Code §§ 30025, 30029(c). The
17 fact that state parolees are under the control and custody of the
18 county, as well as of Defendants, during the time of their
19 incarceration does not relieve Defendants of their independent
20 obligations and responsibilities toward to these individuals. See
21 Armstrong, 622 F.3d at 1072.

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24 Accordingly, Defendants continue to house state prisoners and
25 parolees in county jails pursuant to their authority under both
26 contracts and state law, as they did at the time of the Ninth
27 Circuit's earlier opinion in this case. Thus, as the Ninth
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1 Circuit previously held, Defendants are obliged to ensure
2 ADA-compliant conditions for the prisoners and parolees that they
3 house under their own authority in county jails.

4 II. Evidence of Violation of Class Members' Rights

5 Plaintiffs' evidence demonstrates that, both before and after
6 Defendants issued the County Jail Plan, Armstrong class members
7 have suffered significant violations of their ADA rights while
8 housed in county jails. Plaintiffs submitted substantial
9 evidence, including more than sixty declarations from class
10 members, demonstrating that class members in jails throughout the
11 State are injured and are denied access to housing, programs, and
12 services because of Defendants' failure to accommodate their
13 disabilities.⁶ Although Defendants again disclaim their
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16 ⁶ In their reply, Plaintiffs clarified that the county-based
17 Post-Release Community Supervision (PRCS) program was not covered
18 by the instant motion. On October 20, 2011, a week after
19 Plaintiffs filed their reply, Defendants filed objections to the
20 declarations that Plaintiffs had submitted with their opening
21 brief and with their reply. Defendants challenged the
22 admissibility of the declarations on the grounds that the
23 declarants do not make clear what their commitment offenses were
24 and thus if they are state parolees or part of the PRCS program.
25 However, under the provisions of re-alignment, the declarants
26 could not be part of the PRCS program. Each declarant attests
27 that he or she was on parole prior to October 1, 2011. Under
28 state law, the PRCS program only began prospectively on that date;
that is, state law provides that those already on parole prior to
October 1, 2011 are not eligible to participate in it. Cal. Penal
Code § 3451(a).

Four days later, on October 24, 2011, without seeking leave
of Court to do so, Defendants filed further objections to the
evidence that Plaintiffs had submitted with their reply. Civil
Local Rule 7-3 allows a party, without seeking prior Court
approval, to file a single document objecting to new evidence
submitted with a reply within seven days after the reply is filed.
See Civil Local Rule 7(d). Defendants' supplementary objections
were untimely and unauthorized by Local Rule 7-3, because

1 responsibility toward these individuals as discussed above,
2 Defendants do not dispute that these violations are still
3 occurring more than a decade after this Court first found that
4 Defendants were failing to accommodate the needs of class members
5 in County facilities. The overwhelming and disturbing evidence is
6 summarized below.

7 Class members with mobility impairments were denied assistive
8 devices, or had assistive devices taken away from them, while
9 housed in county jails, even though Defendants had previously
10 determined the assistive devices were necessary for the class
11 members to access programs and services while in custody. Class
12 members were not provided with accessible housing, making it
13 difficult and dangerous for them to access their beds, toilets,
14 showers, chow halls, exercise yards, meetings with attorneys, and
15 parole proceedings. One class member was forced to sleep on the
16 floor for sixteen nights. Other class members crawled or limped
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20 Defendants had already filed an objection to Plaintiffs' reply evidence.

21 In this document, Defendants argue that evidence Plaintiffs
22 offered with their reply, including eight additional declarations,
23 should not be considered, as it was "procedurally improper" to
24 offer it in this way. It is true that "[u]nder such
25 circumstances, the court has discretion to 'decline to consider'
26 the new evidence." Mercado v. Sandoval, 2009 U.S. Dist. LEXIS
27 63267, at *6 (E.D. Cal.). Unlike in the cases cited by
28 Defendants, however, Defendants here have had the opportunity to
address this new evidence at a subsequent hearing. See, e.g.,
Carmen v. San Francisco Unified School Dist., 237 F.3d 1026, 1031
(9th Cir. 2001). Accordingly, the Court overrules Defendants'
objections to the reply evidence submitted by Plaintiffs, because
the objections were submitted in violation of Local Rule 7-3 and
because Defendants had the opportunity to respond to this evidence
at the hearing.

1 in pain to hearings and meetings in county jails. Still others
2 received wheelchairs while in revocation hearing rooms, but not in
3 transit to and from those same hearing rooms. A class member
4 housed at the Yuba County Jail had his wheelchair taken away and
5 not returned, and was unable to shower as a result. This also
6 happened during the same class member's separate stay at the
7 Sutter County Jail. Both jails informed this prisoner that there
8 was no appeals process. Another class member with a mobility
9 impairment being held at the San Francisco County Jail was
10 initially informed by an officer that he could not use his
11 wheelchair to travel long distances, despite a written
12 verification from his doctor. The jail refused to allow this
13 prisoner any assistive devices inside his cell, which sometimes
14 required him to hop around his cell. He had to sleep on a
15 mattress on the floor for approximately seven days because the
16 jail would not provide him with a lower bunk. Staff at Stanislaus
17 County Jail took away the wheelchair of a parolee who required it
18 to travel more than ten feet. As a result, another prisoner was
19 required to hold him up and help him to the shower. The prisoner
20 was told there was no appeals process at the jail. Similarly,
21 staff at the Alameda County Jail in Santa Rita denied a wheelchair
22 to another prisoner with a severe mobility impairment, making it
23 painful and difficult for him to get around. Jail staff also
24 failed to provide him with a shower chair, which made it difficult
25 and dangerous for him to shower. Staff at Sonoma, Sutter, and

1 Sacramento County jails have removed canes from class members,
2 making it painful and hard for them to walk distances, shower, and
3 go up and down stairs.

4 Class members with hearing and vision impairments did not
5 receive accommodations necessary for effective communication while
6 housed in county jails. Sign language interpreting services were
7 not regularly available to class members housed in county jails.
8 Class members with hearing impairments were not provided with sign
9 language interpreters for important medical and mental health care
10 appointments, which impeded or obstructed their access to those
11 services. One parolee with severe hearing loss was provided with
12 a sign language interpreter only once in the seventy-five days he
13 was at the Santa Rita jail, and went to medical appointments on
14 three or four occasions without being provided access to a sign
15 language interpreter.
16

17 Deaf class members could not access the telecommunications
18 devices for the deaf (TDD/TTY telephones) they need to prepare
19 their defenses and communicate with family and the outside world.
20 Because the Santa Rita TDD/TTY telephone was broken, a deaf
21 parolee was only able to use the telephone three times in the
22 seventy-five days he was in the jail. Another deaf parolee had a
23 similar experience at Santa Rita.
24

25 A class member housed by Defendants at the Los Angeles County
26 Jail's Twin Towers facility was not provided with a sign language
27 interpreter for medical visits or psychiatric appointments,
28

1 despite his request for one. A deaf parolee housed at the San
2 Diego Jail was also denied a sign language interpreter for medical
3 and dental appointments. Because some officers did not know this
4 prisoner was deaf, officers would "get mad" at him when he did not
5 respond to verbal commands. This prisoner missed meals, yard,
6 appointments, and canteen call because he was unable to hear the
7 events announced over the loudspeaker and no one notified him of
8 the events. He was also unable to participate in psychiatric
9 treatments and therapy groups and had trouble communicating with
10 jail staff about his need for the TDD/TTY telephone. A blind
11 class member was denied a tapping cane at the San Francisco County
12 Jail.
13

14 Armstrong class members housed in county jail are frequently
15 forced to rely upon other prisoners to help them access programs
16 and services as a result of the failure by Defendants and the
17 county jails to provide reasonable accommodations. Reliance on
18 other prisoners for access to basic services, such as food, mail,
19 showers and toilets by prisoners with disabilities leaves them
20 vulnerable to exploitation and is a dangerous correctional
21 practice.
22

23 Class members do not have access to functional and timely
24 grievance procedures at county jails to request and obtain
25 disability accommodations. As noted above, at some jails, class
26 members were informed that no grievance procedure exists. At
27 other jails, class members were able to submit grievances but
28

1 never received a response or did not receive a response in a
2 timely manner.

3 III. Defendants' Failure to Address System-wide Violations

4 Plaintiffs contend, and Defendants do not dispute, that
5 Defendants' efforts to comply with the ADA, the Rehabilitation Act
6 and prior orders of this Court, and to provide accommodations to
7 class members housed in county jails, have been wholly inadequate
8 and ineffective on a system-wide level, resulting in widespread
9 and continuing violations of class members' rights as described
10 above. The Court finds it troubling that Defendants continue to
11 oppose Plaintiffs' request for relief while apparently recognizing
12 that all of the evidence demonstrates that it is needed.
13

14 Although Defendants have developed a computerized, real-time
15 system called the Disability and Effective Communication System
16 (DECS) for tracking disabilities and effective communication needs
17 of prisoners housed in CDCR prisons and on parole, Defendants
18 still have not developed any system, electronic or otherwise, for
19 identifying or tracking such disabilities and needs of CDCR
20 prisoners housed in county jails and facilities. Defendants still
21 do not know the specific location at which those class members are
22 housed, and what accommodations in housing, programs, services,
23 and effective communication those class members require.
24

25 The contracts between Defendants and Alameda and Sacramento
26 Counties for the housing of CDCR prisoners in those jails violate
27 the March 21, 2001 Permanent Injunction because they do not
28

1 include the following provision or one substantially similar, as
2 required by Paragraph 8 of the Injunction: "By signing this
3 contract, Contractor assures the State that it complies with the
4 Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101
5 et seq., which prohibits discrimination on the basis of
6 disability, and with applicable regulations and guidelines issued
7 pursuant to the ADA."
8

9 Defendants also contract with several counties to provide
10 drug counseling in lieu of parole revocation through the
11 In-Custody Drug Treatment Program (ICDTP). Armstrong class
12 members continue to have only limited access to ICDTPs offered at
13 county jails because several of Defendants' ICDTP contracts
14 violate the ADA through their Local Jail Exclusionary Criteria
15 which ban persons with disabilities from participation.
16 Defendants' own tracking system shows that one parolee in a
17 wheelchair was rejected from the ICDTP due to a mobility
18 impairment. Another parolee's file indicates that the fact that
19 he is in a wheelchair may limit his ICDTP-jail placement.
20

21 The County Jail Plan as drafted and implemented by Defendants
22 has been inadequate and ineffective in remedying the ongoing
23 violations of the rights of class members housed in county jails.
24 It is troubling that Defendants do not defend the sufficiency of
25 the Plan in any way or show that they have properly implemented
26 even the basic mandates of their own Plan. Defendants also do not
27 respond to the declarations that demonstrate that class members
28

1 continue to suffer harm after their Plan was purportedly
2 "operating appropriately." The Plan does not have any provision
3 for Defendants promptly to provide the County Jails with
4 information about previously-identified disabilities or necessary
5 accommodations for class members housed in county jails. It also
6 does not have any provision for Defendants to determine whether a
7 CDCR prisoner or parolee who is housed at a county jail requires
8 any accommodations. In the Plan, Defendants elected to rely on
9 the existing grievance procedures available at the county jails,
10 but failed to confirm that the county jails' grievance procedures
11 were adequate or appropriate as written or in practice.
12
13 Defendants do not monitor grievances of class members in the
14 county jails or have a means for providing to Plaintiffs' counsel
15 a copy of every disability-related grievance filed by an Armstrong
16 class member housed in a county jail.

17
18 Defendants' County Jail Plan is, on its face, insufficient to
19 ensure the accommodation of class members housed in county jails.
20 Only a single provision in the Plan--that Division of Adult Parole
21 Operation (DAPO) and BPH employees must contact the county jail if
22 a parolee held in the jail pending revocation requests an
23 accommodation or if the employees observe or become aware of the
24 need for an accommodation--might result in the accommodation of a
25 class member who otherwise would not be accommodated while in
26 county jail. The County Jail Plan does not, however, require that
27 Defendants' staff do anything to verify that class members are in
28

1 fact being accommodated by the county jails. Nor it does it
2 provide for Defendants to share information regarding class
3 members' disabilities and accommodation needs with the county
4 jails, even though Defendants have a computerized tracking
5 system--DECS--dedicated to that purpose. The County Jail Plan
6 also has no provisions whatsoever that could result in the
7 accommodation of class members housed in county jail who are not
8 parolees pending parole revocation. This include parolees serving
9 their revocation terms, CDCR prisoners who are "out-to-court," and
10 prisoners at jail-based In-Custody Drug Treatment Programs. The
11 Plan does not even provide that these class members may be moved
12 away from a facility that is unable to meet their needs.

14 The evidence shows, and Defendants do not dispute, that
15 Defendants rarely comply with the provision of the County Jail
16 Plan requiring them to request disability accommodations from
17 county jails on behalf of class members. Out of many thousands of
18 BPH Form 1073 documents completed over the past year, only a
19 handful reflect appropriate follow-up by CDCR officials with
20 knowledge of a class member's disability needs.

22 Moreover, Defendants substantially delayed the implementation
23 of critical provisions of their County Jail Plan. For example,
24 the County Jail Plan explicitly provides that BPH would modify the
25 BPH 1073 form to create a space for Notice Agents, and other staff
26 who interact with CDCR prisoners in county jails, to indicate when
27 they had contacted county jail staff, to request an accommodation
28

1 for a class member. Defendants took more than six months to
2 modify the electronic version of the BPH 1073 form and took more
3 than thirteen months to modify the paper version of the form.
4 DAPO never trained its staff regarding how to use the new
5 functionalities of the revised electronic BPH 1073 form.

6 Defendants do not dispute that they have failed to provide
7 appropriate training and supervision for the staff responsible for
8 implementing the County Jail Plan. Defendants did not effectively
9 monitor or supervise their own employees to determine if they were
10 complying with the Plan or whether the Plan was effective in
11 assuring that class members were receiving accommodations while
12 housed in county jails. BPH waited more than two and a half
13 months after the Plan was purportedly implemented even to inform
14 its staff of their obligations under the Plan. Despite the Plan's
15 reliance on the Correctional Standards Authority (CSA) to "monitor
16 this matter" and describe "problems," Defendants did not even
17 inform the CSA that the final County Jail Plan had been issued,
18 much less instruct the CSA to monitor for ADA compliance. No
19 monitoring by the CSA has occurred.

22 Defendants have abdicated their responsibility for
23 accommodating Armstrong class members to the county jails.
24 Defendants possess little to no knowledge regarding whether the
25 county jail facilities in which they house Armstrong class members
26 are physically accessible to wheelchair users. Defendants'
27 knowledge of the wheelchair accessibility of the county jails is
28

1 derived from a 2007 survey whereby Defendants sent a letter to the
2 counties requesting that they self-report the accessibility of
3 cells in their jails. Defendants then compiled the answers that
4 they received into a single document. In its final form, the
5 survey results lacked information for many of the county
6 facilities. Moreover, Defendants never endeavored to confirm that
7 the information provided to them by the counties was accurate.
8 Defendants are aware of court orders and litigation pending
9 against Orange and Los Angeles Counties regarding the inadequacy
10 of their wheelchair accessible housing. Defendants are also aware
11 that certain facilities in San Diego County lack wheelchair
12 accessible housing. Yet Defendants have taken no steps to ensure
13 that Armstrong class members are protected when housed in those
14 counties.
15

16 Defendants do not dispute that they have not taken any steps
17 to investigate the allegations of ADA violations made in the
18 declarations of Armstrong class members housed in county jails
19 that Plaintiffs have provided to Defendants from September 2009
20 forward.
21

22 Defendants' communication of the County Jail Plan to the
23 counties--in a single letter from CDCR's General Counsel on April
24 12, 2010--did not adequately convey to the counties their existing
25 obligations under the ADA and Rehabilitation Act. In particular,
26 CDCR's statement in that letter that the County Jail Plan "does
27 not require county jails to change any policies or procedures
28

1 already in place" renders meaningless any report that Defendants
2 might make to the counties of patterns of ADA non-compliance.
3 Given this statement, any county informed of such a pattern will
4 believe that it is not required to do anything to address or
5 resolve such a pattern. In addition, the evidence shows that
6 Defendants did not follow up with any counties regarding the
7 implementation of the County Jail Plan after that letter.
8

9 Defendants have never engaged in any comprehensive effort to
10 verify that the disability-related county jail policies and
11 procedures, including grievance procedures, are adequate to ensure
12 the accommodation of class members. Despite claiming to rely on
13 these policies and procedures as adequate for this purpose,
14 Defendants gathered these policies for only a handful of counties.
15 In February 2011, Plaintiffs provided Defendants with more than
16 5,000 pages of county disability-related policies and procedures
17 that Plaintiffs had collected through California Public Records
18 Act requests. Defendants do not dispute that they have done
19 nothing to review or analyze the policies.
20

21 The Court adopts the findings and opinions of Plaintiffs'
22 well-qualified expert, Jeanne Woodford, former warden at San
23 Quentin State Prison and former acting Secretary of the CDCR. Ms.
24 Woodford examined a number of disability-related county jail
25 policies and procedures and found many of them to be deficient in
26 their mechanisms timely and effectively to identify, track, and
27 ensure the provision of accommodations to prisoners with
28

1 disabilities. Defendants have not challenged Ms. Woodford's
2 report or its findings. Ms. Woodford concluded that many counties
3 lack a comprehensive plan describing the basic ADA policies and
4 procedures for their jail systems or have ADA-related policies
5 that are so vague and indefinite as to be almost useless.

6 Ms. Woodford found that many counties had policies prohibiting
7 prisoners from possessing assistive devices, such as canes,
8 walkers, and wheelchairs, based upon unfounded fears about
9 prisoners using assistive devices as weapons. Ms. Woodford also
10 identified a number of counties that lacked timely and effective
11 grievance procedures to provide prisoners a mechanism for seeking
12 accommodations. She further noted that many county jail policies
13 provide for the segregation of prisoners with disabilities from
14 the general population and, by so doing, likely deprive prisoners
15 with disabilities of equal access to programs and services within
16 the jail.
17

18 IV. Scope of Appropriate Relief

19
20 Defendants have only identified two objections that
21 Plaintiffs' proposed relief is not narrowly tailored to the
22 violations shown.

23 First, Defendants state that the functions of their agents
24 that are referred to in the proposed injunction "will likely be
25 assumed by various county personnel" at a future date, if further
26 legislative changes take effect, and after that time, they will no
27 longer have representatives regularly visiting county jail
28

1 facilities. Thus, it would purportedly be unduly burdensome for
2 Defendants to be required to interview those who recently have
3 arrived on a parole hold and to collect grievance forms, should
4 Defendants choose not to rely on the county jail's grievance
5 procedures. However, at the hearing, Defendants acknowledged that
6 their parole agents are currently going to county jails twice per
7 week as part of the parole revocation process. Accordingly, it
8 will not be unduly burdensome for them to perform these tasks
9 during these regular visits. Alternatively, Defendants may avoid
10 performing these tasks if they can certify that the jail has an
11 adequate disability grievance procedure.

13 Secondly, Defendants argue that system-wide relief is not
14 necessary to address the injuries suffered by the reduced number
15 of class members housed in county jails after October 1, 2011.
16 However, the Court is not persuaded that the number of class
17 members will decrease. Regarding the individuals for whom
18 Defendants do not dispute they have responsibility, Defendants
19 state only that they anticipate the numbers of these individuals
20 will decrease in the future, in part because they may choose to
21 move offenders sentenced to life terms to state prison. Based on
22 this conjecture, Defendants argue that the relief sought will be
23 broader than necessary to protect the remaining individuals. Id.
24 Defendants do not address the individuals held in county jails
25 pursuant to contracts, those who are in ICDTPs in county jails or
26 the state inmates housed in county jail for county proceedings.
27
28

1 Regarding state parolees, they argue only that these individuals
2 are no longer class members; the Court already held above that
3 they continue to be class members. According to Defendants' own
4 projections, the numbers of these individuals in county jails will
5 increase under realignment. Thus, the relief is not too broad for
6 this reason.

7
8 Further, Defendants do not dispute that there will continue
9 to be class members in county jails. The Ninth Circuit has
10 repeatedly held in prior decisions related to this case that "'if
11 the injury is the result of violations of a statute . . . that are
12 attributable to policies or practices pervading the whole system
13 (even though injuring a relatively small number of plaintiffs),'
14 then '[s]ystem-wide relief is required.'" Armstrong v.
15 Schwarzenegger, 622 F.3d at 1072-73 (quoting Armstrong v. Davis,
16 275 F.3d 849, 870 (9th Cir. 2001)). Defendants do not dispute
17 that there are currently class members still housed in county
18 jails or that Defendants' system-wide policies and practices have
19 caused, and continue to cause, substantial injury to class
20 members, even if they dispute the size of this group.

21
22 Given the ineffectiveness of Defendants' County Jail Plan,
23 Defendants' consequent reliance on the county jails to accommodate
24 Armstrong class members, and the deficiencies identified in the
25 disability-related county jail policies and procedures and in
26 certain facilities' housing, the Court finds that the types of ADA
27 violations experienced by the class member-declarants have been,
28

1 and will continue to be, experienced by many other class members
2 who have been and will be housed in county jails throughout
3 California. The serious violations of the rights of class members
4 while housed in county jails are systemic, persistent, and
5 continuing throughout the State and are directly attributable to
6 Defendants' failure to implement appropriate policies and
7 procedures to identify, track, and accommodate these class
8 members, to communicate appropriate information to the county
9 jails, and to monitor compliance by the county jails. The Court
10 finds that the harm experienced by class members is caused not
11 only by Defendants' statewide policies (or lack thereof) regarding
12 the housing of Armstrong class members in county jails, but also
13 by Defendants' ongoing failure to train, supervise, and monitor
14 CDCR employees and agents concerning their responsibilities,
15 ongoing failure to communicate with county jails regarding the
16 known needs of class members, and ongoing failure to take
17 responsibility for and to assert influence over county jails
18 through contracts, regulations, letters, meetings, or other
19 communications. The Court therefore finds that only system-wide
20 injunctive relief could prevent Armstrong class members from
21 experiencing future ADA violations when housed in county jails.

22 V. Constitutionality under Printz v. United States and New York
23 v. United States

24 Defendants repeat an argument previously made and rejected by
25 the Ninth Circuit that the relief sought would "commandeer" them
26
27
28

1 "to enforce federal law," in violation of Printz v. United States,
2 521 U.S. 898 (1997) and New York v. United States, 505 U.S. 144
3 (1992). Opp. at 8-9. Defendants argue that, under realignment,
4 they no longer "choose to house" parolees in county jails, and
5 thus that the relief sought would "require Defendants to ensure
6 ADA-compliant conditions not for class members, but rather for
7 offenders being held under the counties' authority." Opp. at 8.

8
9 First, as the Ninth Circuit already recognized, unlike in
10 Printz and New York, this is not an action by the federal
11 government seeking to commandeer a local entity to carry out a
12 federal obligation; it is instead an action by private parties--
13 parolees who fit the class definition--seeking to enforce their
14 constitutional rights, and thus these cases are not relevant here.
15 Armstrong, 622 F.3d at 1089. Further, as already discussed above,
16 the relief that Plaintiffs seek would require only that Defendants
17 ensure ADA-compliant conditions for state prisoners and parolees
18 who are being held in county facilities pursuant to Defendants'
19 contractual and statutory authority. Thus, the order does not
20 mean that the State would have to ensure that county jails follow
21 federal law, but rather that the State itself must follow federal
22 law. Id. at 1069. Accordingly, the proposed injunction does not
23 violate the principles set forth in Printz and New York.
24

25 VI. Abstention
26

27 Defendants state that this Court should decline to exercise
28 its jurisdiction over matters pertaining to county jails because

1 of two class action suits addressing conditions of confinement in
 2 particular jails, Pierce v. County of Orange, No. 01-00981 (C.D.
 3 Cal.)⁷ and Johnson v. Los Angeles Co. Sheriff's Dep't, No. 08-3515
 4 (C.D. Cal.), a consent decree concerning jail conditions in Santa
 5 Clara County, Padilla v. Ryan, No. 98-2309 (N.D. Cal.), and a
 6 settlement between the U.S. Department of Justice and Alameda
 7 County concerning jail conditions.

8
 9 However, none of these cases upon which Defendants rely
 10 counsel abstention in the instant situation. In Pacesetter Sys.,
 11 Inc. v. Medtronic, Inc., 678 F.2d 93 (9th Cir. 1982), the Ninth
 12 Circuit upheld the district court's dismissal of an action because
 13 an identical complaint involving the same parties and issues had
 14 first been filed in another court. Id. at 94-97. In Church of
 15 Scientology v. U.S. Dep't of Army, 611 F.2d 738 (9th Cir. 1979),
 16 the Ninth Circuit recognized that, under comity, a court generally
 17 defers to previously filed litigation, but decided to defer to a
 18 subsequently filed case, because that litigation, which presented
 19 an identical issue, had already progressed through several
 20 substantial litigation steps. Id. at 749-50. In Crawford v.
 21 Bell, 599 F.2d 890 (9th Cir. 1979), the court dismissed an
 22 individual case where the plaintiff was a class member in an
 23 ongoing class action addressing the same issues. Id. at 893.

26 ⁷ While Defendants represent that issues similar to the ones
 27 at hand are currently being litigated in Pierce, a judgment was
 28 entered in that case on June 28, 2011 and the only issue presently
 being litigated is attorneys' fees.

None of the other actions to which Defendants point necessitate abstention in this case. None present the same issues or parties. Each is limited to one or two jails within a single county and was brought against county defendants. None were brought against state defendants or involve state parolees held in jails throughout the State. Further, this action was brought well before any of the other cases and has already required a tremendous amount of litigation prior to this point. Accordingly, this Court does not decline jurisdiction over this matter in light of the cases that Defendants raise.

CONCLUSION

In order to remedy the ongoing harm to Armstrong class members, to ensure that Defendants meet their obligations under the ADA and Rehabilitation Act and prior Court orders, and to enforce the March 21, 2001 Permanent Injunction, and based on the entire record in this action, the Court hereby ORDERS the following relief, all of which it finds is narrowly drawn, extends no further than necessary to correct the violations of federal rights, and is the least intrusive means necessary to correct the violations of the federal rights:

1. Within thirty days of this Order, Defendants shall develop a revised plan for ensuring timely and appropriate accommodations for Armstrong class members in county jails that includes, at a minimum, the following elements:

a. On a daily basis, Defendants shall send to each

1 county a list of all Armstrong class members being housed in the
2 county jail facilities of that county. For each class member, the
3 list shall include the class member's name, CDCR identification
4 number, CDCR disability placement program classification and all
5 accommodations in housing and programming that the Disability and
6 Effective Communication System (DECS) states the class member
7 receives when in custody in one of Defendants' facilities.
8

9 b. Within three business days of the arrival of a
10 prisoner at a county jail facility pursuant to a parole hold,
11 Defendants' agent (whether Parole Agent, Notice Agent, Board
12 Revocation Representative, or other agent) shall check DECS,
13 interview the parolee, and review any available 1073 forms and
14 source documents to determine what, if any, reasonable
15 accommodations in housing, programming, or parole proceedings the
16 parolee requires under the Armstrong Remedial Plan, the ADA,
17 and/or the Rehabilitation Act and whether these accommodations
18 have been provided to the parolee by the county jail. If DECS,
19 the file review, and/or the interview show that an accommodation
20 is required and has not been provided, within four business days
21 of the parolee's arrival, Defendants' agent must notify a
22 designated staff member at the county jail facility of the
23 accommodations in housing and programming that the class member
24 requires and must document that notification on an appropriate
25 form such as the BPH Form 1073.
26
27

28 c. Class members housed in county jails must have

1 ready access to disability grievance forms, either the CDCR's
2 Reasonable Modification or Accommodation Request form (CDC 1824)
3 or a separate county jail grievance form. If Defendants elect to
4 utilize the CDC 1824 form in any of the counties, Defendants shall
5 collect the grievance forms from class members no less than twice
6 a week, and shall provide copies to a designated person at the
7 county jail. Defendants shall respond to all grievances within
8 fifteen calendar days of receipt and make their best efforts to
9 ensure that necessary and reasonable accommodations are provided.
10 If a class member identifies the grievance as urgent or an
11 emergency (i.e., if it alleges a condition which is a threat to
12 the parolee's health or safety, or is necessary for participation
13 or effective communication in a parole revocation proceeding),
14 Defendants shall respond to such a grievance within five calendar
15 days of receipt and make their best efforts to ensure that
16 necessary and reasonable accommodations are provided on an interim
17 basis. For the first six months in which the plan is in effect,
18 Defendants must produce to Plaintiffs' counsel on a monthly basis
19 all grievances collected by Defendants pursuant to this
20 subsection. Production may shift to two times a year after the
21 first six months.

22 d. If Defendants contend that the process outlined in
23 Paragraph (1)(c) is unnecessary because a jail has an adequate
24 disability grievance process, Defendants must certify, within
25 thirty days of the acceptance of their plan, that each such jail's

disability grievance policy contains the following elements:

i. Is readily available to all class members housed in that county's jail facilities;

ii. Has an initial response deadline of no later than fifteen calendar days from receipt by the designated jail staff member;

iii. Contains a provision for expediting a response if the appeal alleges a condition which is a threat to the parolee's health or safety, or is necessary for participation or effective communication in a parole revocation proceeding;

iv. Includes a provision for review of the parolee's request by medical staff, if necessary;

v. Provides a right to appeal denials; and

vi. Requires that a copy of each and every grievance and response be provided to Defendants at the same time it is provided to the Armstrong class member.

e. If Defendants contend that the process outlined in Paragraph (1)(c) is unnecessary because a jail has an adequate disability grievance process, for the first six months in which the plan is in effect, Defendants must produce to Plaintiffs' counsel on a monthly basis all grievances provided to Defendants pursuant to subsection (d)(vi) of this paragraph. Production may shift to two times a year after the first six months.

f. If, either through a grievance or otherwise, Defendants become aware of a class member who is housed in a

1 county jail and not receiving accommodations that he or she
2 requires, Defendants shall immediately take steps with county jail
3 staff to ensure that such accommodations are promptly provided or
4 transfer the class member to a facility that is able to provide
5 accommodations.

6 g. If Defendants become aware, either through a
7 grievance or otherwise, of a pattern of denials of disability
8 accommodations, such as improper housing and/or denial of
9 assistive devices to class members at a particular county jail
10 facility, or grievance process delays or obstacles, they shall
11 take the following steps:

12 i. Within five calendar days of becoming aware of
13 the pattern, Defendants shall notify the county jail facility
14 administrator in writing of the issue, providing specific dates
15 and incidents, and demanding that the conduct cease and desist;

16 ii. At the same time, provide a copy of this
17 notification to Plaintiffs' counsel; and

18 iii. Assign a staff person to investigate the
19 county jail facility and report back to Defendants within thirty
20 days, with a copy to Plaintiffs' counsel, regarding the pattern
21 and steps to be taken to remedy it, including any available
22 monetary fines and penalties for continued violations.

23 2. Within forty-five days of this Order, Defendants shall
24 issue the plan in final form and disseminate it to all jail
25 facilities in the fifty-eight counties. Defendants shall also
26
27
28

1 disseminate the plan to all relevant personnel employed by
2 Defendants and conduct training of such personnel on the plan upon
3 its dissemination and thereafter on an annual basis.

4 3. Defendants shall permit Plaintiffs' counsel to monitor
5 the plan and the accommodations provided to Armstrong class
6 members while housed in county jails. Reasonable monitoring shall
7 include, at a minimum:

8 a. The ability to conduct a sufficient number of tours
9 per year of county jail facilities in which Armstrong class
10 members are held to determine compliance with this order;

11 b. The right during the aforementioned monitoring
12 tours to conduct interviews with county jail staff members and
13 with Armstrong class members housed in county jails, and to review
14 all files and documents pertaining to Armstrong class members,
15 including class members' jail custody and medical files and jail
16 policies and procedures affecting prisoners with disabilities;

17 c. The opportunity to review and comment on materials
18 used to train Defendants' staff who work in or with county jails
19 about the ADA, the Rehabilitation Act, and the Armstrong case
20 sufficiently in advance of training sessions and to observe those
21 sessions.

22 d. A monthly document production that includes all
23 memoranda, DECS County Jail Accommodations Reports, BPH Form
24 1073s, tracking logs, and other documents related to the plan.

25 4. Pursuant to this Court's March 21, 2001 Permanent
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27
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1 Injunction, Defendants must add the following language, or
2 substantially similar language, to any existing or future
3 contracts with a county for the housing of CDCR prisoners,
4 parolees, or supervised releasees in county jails, including
5 Defendants' contracts for the housing of CDCR prisoners in the
6 jail facilities of Alameda and Sacramento Counties and Defendants'
7 contracts with any counties to operate jail-based In-Custody Drug
8 Treatment Programs: "By signing this contract, Contractor assures
9 the State that it complies with the Americans with Disabilities
10 Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., which prohibits
11 discrimination on the basis of disability and with applicable
12 regulations and guidelines issued pursuant to the ADA."

14 5. The parties shall agree on a mechanism for promptly
15 addressing concerns raised by Plaintiffs' counsel regarding
16 individual class members housed in county jails and emergencies.

18 6. Defendants must present drafts of all plans, policies,
19 and procedures developed pursuant to this Order to Plaintiffs'
20 counsel at least fifteen days in advance of the deadlines. Both
21 parties must make all possible efforts to resolve any
22 disagreements as to their adequacy. Defendants shall ensure that
23 staff with sufficient authority to amend and approve procedures
24 attend all meet and confer sessions. In the event that
25 disagreements cannot be resolved, Defendants shall implement the
26 procedures as written on the date ordered and Plaintiffs' counsel
27 shall file objections with the Court. The Court will rule on the
28

1 objections and issue orders amending procedures as necessary.

2 7. This Order shall apply to Defendants, their agents,
3 employees, successors in office, and all persons with knowledge of
4 it. The Court shall retain jurisdiction to enforce the terms of
5 this Injunction.

6
7 IT IS SO ORDERED.

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9 Dated: 1/13/2012


CLAUDIA WILKEN
United States District Judge

United States District Court
For the Northern District of California